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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,921	07/13/2001	Daniel R. Joseph	0291MH-24527C	4596

7590

03/13/2003

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EXAMINER

LEYSON, JOSEPH S

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,921

Applicant(s)

JOSEPH, DANIEL R.

Examiner

Joseph Leyson

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art.Unit: 1722

1. The title and abstract should be amended to reflect the claim invention, i.e. apparatus only.
2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract should be amended not to exceed 150 words.

3. The status of the parent case on p. 1 should be updated. The examiner suggests deleting the sentence inserted on p. 1 by the preliminary amendment in the transmittal papers filed on 13 July 2001 and replacing it with the following paragraph:

-- This is a continuation of Application Serial No. 08/800,665 filed 14 February 1997, now U.S. Patent No. 6,293,778. --

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1722

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halter(-288) in view of Cree(-134).

Halter(-288) discloses a blown film extrusion apparatus in which film is extruded as a tube 15 from an annular die 2 and then pulled along a predetermined path including an apparatus for startup of the extruded film tube (i.e., col. 6, line 16, to col. 7, line 68) including means for varying a quantity of air within the extruded film tube including a blower 6 which supplies air 7 to the extruded film tube and which exhausts air 12 from the extruded film tube 15 and valves 9 for controlling the flow of the supply and exhaust air and thus the quantity of air within the extruded film tube, and a controller member 30 including executable program instructions which define at least one control routine for automatic and coordinated control of the means for varying the quantity of air within the extruded film tube during starting of the extruded film tube by directing a series of supply control signals thereto.

Cree(-134) disclose a blown film extrusion apparatus including means for varying a quantity of air within an extruded

Art. Unit: 1722

film tube 22 including a supply blower 120 which supplies air 126 to the extruded film tube 22 in an amount corresponding to a supply control signal 118, and an exhaust blower 124 which exhausts air 128 from the extruded film tube 22 in an amount corresponding to an exhaust control signal 122, and a controller member 114 including executable program instructions which define at least one control routine for automatic and coordinated control of the air quantity varying means by directing a series of supply control signals to the supply blower and exhaust control signals to the exhaust blower means for varying the quantity of air within the extruded film tube.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the means for varying the quantity of air with the extruded film tube of Halter(-288) with the supply blower and exhaust blower of Cree(-134) because such a modification would provide an art recognized alternative configuration for the air quantity varying means and/or would provide separate sources of supply and exhaust air which are independent from each other and independently controlled.

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple

Art. Unit: 1722

assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7, 9-12, 15-17, 19, 22-25, 27-30, 33-35, 37, 38 and 40-43 of U.S. Patent No. 6,293,778. Although the conflicting claims are not identical, they are not patentably distinct from each other because elimination of an element and its function in a combination is an obvious expedient if the remaining elements perform the same functions as before, *In re Karlson*, 136 USPQ 184. Furthermore, see *In re Goodman*, 29 USPQ2d 2010.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Upmeier et al.(-212), Joseph(-383), Joseph(-277), Joseph (-393), Joseph(-593), Cole(-645), Wybenga(-462) and Carlsen(-460) are cited as of interest.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph

Art.Unit: 1722

Leyson whose telephone number is (703) 308-2647. The examiner can normally be reached on M-F(8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on (703) 308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

jl

jl
March 6, 2003

James Mackey
JAMES P. MACKEY
PRIMARY EXAMINER

3/6/03